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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joshua S. Barkley,

10 Plaintiff,

11 v.

12 United States Department of Labor, et al.,

13 Defendants.
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No. CV-19-01595-PHX-DWL

ORDER

15 Pending before the Court are two motions filed by Plaintiff Joshua Barkley
16 (“Plaintiff”), one seeking sanctions against Defendant International Association of EMTs
17 and Paramedics IAEP/NAGE/SEIU 5000 (“IAEP”) (Doc. 39) and the other seeking
18 sanctions against Defendant Independent Certified Emergency Professionals of Arizona
19 (“ICEP”) (Doc. 40.)

20 Plaintiff, who is proceeding *pro se*, filed this lawsuit on March 8, 2019 (Doc. 1) and
21 then filed an amended complaint on April 23, 2019 (Doc. 21). Although Plaintiff didn’t
22 comply with the Local Rules when filing the amended complaint, the Court declined to
23 strike it—instead, Plaintiff was simply required to file a redlined version showing how it
24 differed from the original complaint. (Doc. 35.) Plaintiff has since filed a redlined version
25 (Doc. 37), but Defendants raised additional concerns during the scheduling conference on
26 May 20, 2019. (Doc. 38.) The Court has thus ordered the parties to meet and confer in an
27 attempt to address those concerns. (Doc. 38.)

28 On the merits, it appears that Plaintiff brings this lawsuit to challenge the results of

1 a union election. Specifically, Plaintiff was once the president of ICEP. (Doc. 30 at 11-
2 15.) In 2014, the U.S. Department of Labor (“DOL”) filed a lawsuit against ICEP for
3 violating a federal statute that requires unions to hold periodic officer elections. (*Id.*) The
4 judge overseeing that case (Judge Wake) ordered ICEP to hold such an election and also
5 ordered the DOL to supervise the election. (*Id.*) In that election, which concluded in 2015,
6 another candidate prevailed over Plaintiff, but Plaintiff disputes this outcome and contends
7 that various irregularities occurred. (*Id.*)

8 Notably, this lawsuit is not Plaintiff’s first attempt to assert legal challenges related
9 to the ICEP election. First, during the DOL lawsuit in 2014 before Judge Wake, Plaintiff
10 attempted to intervene, but this request was denied and his pleadings were stricken. (Case
11 No. 14-cv-1723-NVW, Docs. 28, 34, 43.)

12 Second, in 2015, Plaintiff sued ICEP in the Maricopa County Superior Court to
13 obtain reimbursement “for financial losses he sustained in financing and representing ICEP
14 during his time as union president.” *Barkley v. Independent Certified Emergency*
15 *Professions of Arizona, Local #1*, 2018 WL 6802107, *1 (Ariz. Ct. App. 2018). Among
16 other things, Plaintiff argued during that lawsuit that “ICEP’s elected officers were not
17 certified and thus lacked authority to operate the union or to retain counsel to represent the
18 union.” *Id.* at *2. The trial court granted summary judgment in favor of ICEP and the
19 Arizona Court of Appeals affirmed, holding that the docket from Judge Wake’s case did
20 not support Plaintiff’s position. *Id.* at *3 (“[Barkley] did not file a separate statement of
21 facts or attach affidavits, other than his own, to support his motion; instead, he focused on
22 the result of the federal district court-ordered election. The superior court did not err in
23 denying [Barkley’s] motion.”).

24 Third, in 2016, Plaintiff filed a *pro se* lawsuit against the DOL and ICEP to
25 challenge the denial of a series of FOIA requests he’d submitted between July 2014 and
26 April 2016 for documents pertaining to the ICEP election. (Case No. 16-cv-2777-DMF.)
27 That lawsuit was rejected in June 2017, and the Court specifically found in its summary
28 judgment order that the election results had been properly certified:

1 Plaintiff [objects to the DOL’s claim that] “[o]n March 5, 2015, ICEP held
2 elections, and the DOL subsequently certified the results of the election”
3 Plaintiff maintains that this statement is “false,” and asserts that “[t]he DOL
4 (Defendant) lacks the authority to self-certify an election in the courts[,]” and
5 seeks to “mislead this court to say the election was certified when it was not.”
6 ***In the Perez case, the Court ordered DOL “to issue a determination
7 certifying to the Court the election results.” After the election, Defendants
8 complied with this order. Plaintiff provides no evidentiary basis for his
9 argument that the election was not certified***

10 (*Id.*, Doc. 39 at 9, emphasis added.)

11 Notwithstanding all of this, Plaintiff filed a motion at the outset of this case to
12 disqualify the attorneys representing ICEP. (Doc. 29.) This motion was based on the same
13 premise that had been rejected in his earlier lawsuits—*i.e.*, the 2015 election results were
14 never properly certified, so everything ICEP has done since 2015 is null and void. (*Id.* at
15 1 [“This is a sequential case to Arizona US District Court case # CV-2014-01723-NVW to
16 which a court decree was never issued to terminate the case after a Court Ordered Union
17 Officer Election. That order would have certified the Defendant ICEP of AZ’s Officers as
18 the duly elected officials of that union. Without that court order, they operate without the
19 authority of the US District Courts Therefore, Plaintiff remains the President of the
20 ICEP of Arizona and Defendant Counsel was not retained by an officer of the Defendant
21 entity.”].) In an order dated May 15, 2019, the Court denied the disqualification motion,
22 holding that “[t]he whole point of Plaintiff’s lawsuit is to challenge the validity of the 2015
23 election. His motion, however, asks the Court to presume that his challenge will prevail.
24 This is an improper basis for seeking the disqualification of opposing counsel at the outset
25 of a case.” (Doc. 36 at 2.)

26 Undeterred, Plaintiff has now filed a pair of sanction motions. (Doc. 39, 40.) He
27 contends that ICEP and the other union defendant (IAEP) should be sanctioned under Rule
28 37 for failing to produce, as part of the MIDP disclosure process, “the mandated court order
(certification of election) from case CV-14-01723-NVW” that “authorizes their appearance
in this case.” (Doc. 40 at 2; *see also* Doc. 39 at 2.) As a remedy for this alleged violation,
he asks (among other things) for the Court to find ICEP and IAEP and the officers of both

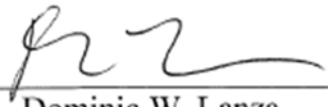
1 unions “in contempt of court for violating a US District Court Order and to protect the
2 constitutional rights of the Plaintiff.” (*Id.* at 3.)

3 Plaintiff’s motions are frivolous and will be denied. As noted, several courts have
4 already rejected Plaintiff’s contention that the results of the 2015 ICEP election weren’t
5 properly certified. Moreover, the docket from the 2014 case before Judge Wake contains
6 a document entitled “Notice of Certification of Election,” which includes a signed
7 document from a DOL official certifying the election results. (Case No. 14-cv-1723-NVW,
8 Doc. 41.) Although Plaintiff may disagree with those rulings and may believe the DOL’s
9 certification document is inadequate, this doesn’t mean that Defendants somehow violated
10 Rule 37 by failing to produce the particular type of certification document that Plaintiff
11 believes should have been issued.

12 Plaintiff is hereby warned that, although he is acting *pro se*, he is still subject to
13 sanctions under Rule 11 for making frivolous arguments. *Warren v. Guelker*, 29 F.3d 1386,
14 1389-90 (9th Cir. 1994) (“[A court] cannot . . . decline to impose any sanction, where a
15 violation has arguably occurred, simply because plaintiff is proceeding *pro se*. A contrary
16 conclusion would effectively place all unrepresented parties beyond the reach of Rule
17 11.”).

18 Accordingly, **IT IS ORDERED** that Plaintiff’s motions for sanctions (Doc. 39, 40)
19 are **denied**.

20 Dated this 22nd day of May, 2019.

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25 Dominic W. Lanza
26 United States District Judge
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